

1 THE HONORABLE RICARDO S. MARTINEZ

2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Petitioner,

12 vs.

13 MICROSOFT CORPORATION, et al.,

14 Respondents.  
15  
16

NO. 2:15-cv-00102 RSM

MICROSOFT CORPORATION'S  
WITNESS AND EXHIBIT LIST FOR  
JULY 21, 2015, EVIDENTIARY  
HEARING

17  
18 **WITNESS LIST**

19 Microsoft submits the following disclosure of witnesses for the evidentiary hearing  
20 scheduled for July 21, 2015, in this matter:

21 1. **Eli Hoory** - Microsoft intends to examine Mr. Hoory at the evidentiary hearing  
22 concerning his background and experience working for the IRS, his role in the IRS's audit of  
23 Microsoft, the IRS's decision to hire outside counsel, the IRS's contracts with outside counsel,  
24 the role that outside counsel has served and is expected to serve under those contracts, Mr.  
25 Hoory's input into and the process for promulgating the Temporary and Proposed Regulations

1 (26 C.F.R. § 301.7602-1(b)(3)), the connection between the hiring of outside counsel and the  
2 Temporary and Proposed Regulations, and any other matter relevant to the factual issues  
3 identified in the Court's June 17, 2015, order granting Microsoft's motion for an evidentiary  
4 hearing.

5         2.         **Daniel Rosen** - Microsoft presently intends to rely on the April 23, 2015,  
6 Declaration that Mr. Rosen submitted in connection with Microsoft's motion for an evidentiary  
7 hearing, but reserves the right to call Mr. Rosen to testify concerning his background and  
8 experience working for the IRS Office of Chief Counsel, the organization and structure of the  
9 IRS and the IRS Office of Chief Counsel, the process for developing published guidance and  
10 regulations within the IRS and the Treasury Department (including the procedures set forth in  
11 the Internal Revenue Manual and those typically followed by the IRS Office of Chief Counsel),  
12 the process that was followed in promulgating the Temporary and Proposed Regulations (as  
13 reflected in documents produced pursuant to Microsoft's FOIA requests), general practices in  
14 the issuance of designated and related summonses and retention of outside counsel and experts  
15 by the IRS and the IRS Office of Chief Counsel in connection with an audit or dispute, the role  
16 that outside counsel has served in the IRS's audit of Microsoft, Microsoft's FOIA requests, and  
17 any other matter relevant to the factual issues identified in the Court's June 17, 2015, order  
18 granting Microsoft's motion for an evidentiary hearing. Microsoft reserves the right also to  
19 call Mr. Rosen in rebuttal to respond to the testimony of Eli Hoory and any other witness the  
20 government makes available at the evidentiary hearing.

21         3.         **Michael Bernard** - Microsoft presently intends to rely on the March 18, 2015,  
22 and April 23, 2015, Declarations that Mr. Bernard submitted in connection with Microsoft's  
23 motion for an evidentiary hearing, but reserves the right also to call Mr. Bernard to testify  
24 concerning the IRS's recent audits of Microsoft, including the IRS's development of the factual  
25 record, the communications between the IRS and Microsoft, the transactions being audited, the

1 IRS's retention of outside counsel, and the role that outside counsel has served in the IRS's  
2 audits of Microsoft, as well as any other matter relevant to the factual issues identified in the  
3 Court's June 17, 2015, order granting Microsoft's motion for an evidentiary hearing.  
4 Microsoft also reserves the right to call Mr. Bernard in rebuttal to respond to the testimony of  
5 Eli Hoory and any other witness the government makes available at the evidentiary hearing.

6 4. **James O'Brien** - Microsoft presently intends to rely on the March 18, 2015,  
7 Declaration that Mr. O'Brien submitted in connection with Microsoft's motion for an  
8 evidentiary hearing, but reserves the right also to call Mr. O'Brien to testify concerning the  
9 IRS's recent audits of Microsoft, the IRS's retention of outside counsel, the IRS's  
10 promulgation of the Temporary and Proposed Regulations (26 C.F.R. § 301.7602-1(b)(3)), the  
11 IRS's contracts with outside counsel, and Microsoft's FOIA requests, as well as any other  
12 matter relevant to the factual issues identified in the Court's June 17, 2015, order granting  
13 Microsoft's motion for an evidentiary hearing. Microsoft also reserves the right to call Mr.  
14 O'Brien in rebuttal to respond to the testimony of Eli Hoory and any other witness the  
15 government makes available at the evidentiary hearing.

16 5. **Any Additional Witnesses the Government Makes Available** - Microsoft  
17 reserves the right to call any additional witnesses the government makes available at the  
18 evidentiary hearing regarding the subject matter identified in the government's witness list  
19 disclosure and any other matter relevant to the factual issues identified in the Court's June 17,  
20 2015, order granting Microsoft's motion for an evidentiary hearing.

## **EXHIBIT LIST**

<b>No.</b>	<b>Description</b>
MS001	IRS Mission Statement Webpage
MS002	IRS Publication 1, Your Rights as a Taxpayer
MS003	IRS Privacy, Governmental Liaison and Disclosure At-a-Glance Webpage
MS004	IRS Office of Chief Counsel At-A-Glance Webpage
MS005	IRS Internal Revenue Manual § 11.3.21
MS006	IRS Internal Revenue Manual § 11.3.24
MS007	IRS Internal Revenue Manual § 25.5.5
MS008	IRS Internal Revenue Manual § 31.1.1
MS009	IRS Internal Revenue Manual § 32.1.1
MS010	IRS Internal Revenue Manual § 32.1.2
MS011	IRS Internal Revenue Manual § 32.1.3
MS012	IRS Internal Revenue Manual § 32.1.9
MS013	IRS Internal Revenue Manual § 32.2.2
MS014	IRS Priority Guidance Plan 2012-13 2nd Quarter Update
MS015	IRS Priority Guidance Plan 2012-13 3rd Quarter Update
MS016	IRS Priority Guidance Plan 2012-13 4th Quarter Update
MS017	IRS Priority Guidance Plan 2013-14 Initial Version
MS018	IRS Priority Guidance Plan 2013-14 1st Quarter Update
MS019	IRS Priority Guidance Plan 2013-14 2nd Quarter Update
MS020	IRS Priority Guidance Plan 2013-14 3rd Quarter Update
MS021	IRS Priority Guidance Plan 2013-14 4th Quarter Update
MS022	IRS Priority Guidance Plan 2014-15 Initial Version
MS023	IRS Priority Guidance Plan 2014-15 1st Quarter Version
MS024	IRS Priority Guidance Plan 2014-15 2nd Quarter Version
MS025	IRS Priority Guidance Plan 2014-15 3rd Quarter Version
MS026	Department of Justice - About the Tax Division Webpage
MS027	Department of Justice - About the Office of Public Responsibility and OPR Policies and Procedures Webpage
MS028	US Office of Government Ethics - Special Government Employees Webpage
MS029	2/15/2000 US Office of Government Ethics Memorandum 00x1 Regarding Summary of Ethical Requirements Applicable to Special Government Employees
MS030	8/29/2013 email from Cheryl Richardson to Hamish Hume, carbon copy to Eli Hoory, Tim Tuey, and Thomas Vidano [Microsoft-FOIA000067]
MS031	9/6/2013 email from Hamish Hume to Cheryl Richardson, carbon copy to Eli Hoory, Tim Tuey, and Thomas Vidano [Microsoft-FOIA000196-198]
MS032	9/6/2013 letter from Hamish Hume to Cheryl Richardson, with attachment [Microsoft-FOIA000199-205]
MS033	9/12/2013 IRS-Boies Schiller Contract TIRNE-13-C-00031 [Microsoft-FOIA000001-61]

No.	Description
MS034	12/10/2013 Modification of IRS-Boies Schiller Contract MOD TIRNE-13-C-00031 [Microsoft-FOIA000062-66]
MS035	David Boies Biography, Boies Schiller Webpage
MS036	Quinn Emanuel Client Testimonials Webpage
MS037	Quinn Emanuel Why Work Here Webpage
MS038	John Quinn Biography, Quinn Emanuel Webpage
MS039	John Gordon Biography, Quinn Emanuel Webpage
MS040	Jeremy Andersen Biography, Quinn Emanuel Webpage
MS041	Noah Helpert Biography, Quinn Emanuel Webpage
MS042	Ryan Keech Biography, Quinn Emanuel Webpage
MS043	Stephen Swedlow Biography, Quinn Emanuel Webpage
MS044	Philippe Pinsolle Biography, Quinn Emanuel Webpage
MS045	9/24/2014 Quinn Emanuel Ethical Wall Memo
MS046	1/24/2014 <i>Apple v. Samsung</i> , Case No. 5:11-cv-01846, Dkt. 2935, Order Granting Motion for Sanctions
MS047	10/14/2013 <i>Apple v. Samsung</i> , Case No. 5:11-cv-01846, Dkt. 2526, Notice of Appearance for John Gordon
MS048	7/30/2012 <i>Apple v. Samsung</i> , Case No. 5:11-cv-01846, Dkt. 1459, Notice of Appearance for John Quinn
MS049	TD 9669, Participation of a Person Described in Section 6103(n) in a Summons Interview Under Section 7602(a)(2) of the Internal Revenue Code, 79 Fed. Reg. 34625 (6/18/2014)
MS050	REG-121542-14, Participation of a Person Described in Section 6103(n) in a Summons Interview Under Section 7602(a)(2) of the Internal Revenue Code, 79 Fed. Reg. 34668 (6/18/2014)
MS051	6/30/2015 IRS Large Business & International Organization Chart
MS052	IRS Organization Chart
MS053	Heather Maloy, Tax Administration: Where the Rubber Meets the Road, 136 Tax Notes 329 (7/16/2012)
MS054	William Hoffman, IRS Budget Cuts 'Will Be Visible' in 2015, Koskinen Warns, 2014 TNT 239-6 (12/12/2014)
MS055	5/13/2015 letter from Senator Orrin Hatch, Chairman, Senate Finance Committee, to IRS Commissioner John Koskinen <sup>1</sup>
MS056	House of Representatives Committee on Ways & Means, Majority Staff Report "Doing Less With Less: IRS's Spending Decisions Harm Taxpayers." (4/22/2015)
MS057	Congressman Peter Roskam, Chairman of the Oversight Subcommittee of the House Committee on Ways and Means, Statement Concerning the IRS's Use of Private Law Firms to Perform Audits and Administer Tax Law (6/18/2015)
MS058	12/10/2014 Declaration of Senior International Advisor Eli Hoory in Support of Petition to Enforce Internal Revenue Service Summons*

<sup>1</sup> Exhibits marked with an asterisk have been previously filed with the Court in connection with the United States' Petition to Enforce Internal Revenue Service Summons, Case No. 15-cv-00102.

No.	Description
MS059	2/10/2015 Supplemental Declaration of Senior International Advisor Eli Hoory in Support of Petition to Enforce Internal Revenue Service Summons
MS060	3/18/2015 Declaration of James M. O'Brien*
MS061	State Bar of Texas Tax Section, Comments on Proposed Regulations Under Section 7602 (9/16/2014)*
MS062	9/22/2014 Freedom of Information Act Request*
MS063	11/26/2014 letter from Eli Hoory to James O'Brien*
MS064	5/19/2014 IRS-Quinn Emanuel Contract TIRNE-14-C-00013 [Microsoft-FOIA-00169-229]*
MS065	10/28/2014 IRS-Quinn Emanuel Modification of Contract TIRNE-14-C-00013 MOD# 0001*
MS066	12/12/2014 Freedom of Information Act Request*
MS067	12/12/2014 Freedom of Information Act Request*
MS068	3/12/2015 Freedom of Information Act Request*
MS069	3/18/2015 Declaration of Michael J. Bernard*
MS070	Undated letter from Alton S. White III to Michael Bernard, with attached Proposed Timeline*
MS071	8/28/2014 letter from Eli Hoory to Michael J. Bernard*
MS072	9/3/2014 letter from Michael J. Bernard to Eli Hoory, Esq.*
MS073	9/9/2014 letter from Eli Hoory to Michael J. Bernard*
MS074	9/10/2014 letter from Michael J. Bernard to Eli Hoory, Esq.*
MS075	9/10/2014 letter from Eli Hoory to Michael J. Bernard, with attachment *
MS076	4/14/2015 United States' Response to Motion for Evidentiary Hearing*
MS077	4/14/2015 Second Declaration of Senior International Advisor Eli Hoory*
MS078	7/12/2012 Proposed Audit Timeline*
MS079	1/31/2013 Updated Audit Timeline*
MS080	3/22/2014 email from Michael Bernard to Eli Hoory*
MS081	3/24/2014 email from Michael Bernard to Eli Hoory*
MS082	Summary of Topics for Call*
MS083	7/15/2014 email from Carol O'Connor to Eli Hoory*
MS084	4/23/15 Declaration of Daniel A. Rosen*
MS085	5/9/2014 email from Cheryl J. Richardson to christayback@quinnemanuel.com, carbon copies to Tim Tuey and Eli Hoory, with attachment*
MS086	9/24/2014 transcript excerpt from the examination of Allison Watson*
MS087	9/22/2014 transcript excerpt from the examination of Richard Berry*
MS088	9/25/2014 transcript excerpt from the examination of David Hamilton*
MS089	10/7/2014 transcript excerpt from the examination of Lynne Frankel*
MS090	9/23/2014 transcript excerpt from the examination of Bob Kelly*
MS091	10/6/2014 transcript excerpt from the examination of Tim O'Brien*
MS092	10/6/2014 transcript excerpt from the examination of Matt Roberts*
MS093	10/10/2014 transcript excerpt from the examination of Chris Suh*
MS094	9/23/2014 transcript excerpt from the examination of Eric David Rudder*

No.	Description
MS095	10/6/2014 transcript excerpt from the examination of David Webster*
MS096	10/7/2014 transcript excerpt from the examination of Marlena Werder*
MS097	9/24/2014 transcript excerpt from the examination of Robert Jeff Hansen*
MS098	10/8/2014 transcript excerpt from the examination of Mitar Azizirad*
MS099	9/22/2014 transcript excerpt from the examination of Chris Capossela*
MS100	9/24/2014 transcript excerpt from the examination of Allison Watson*
MS101	9/22/2014 transcript excerpt from the examination of Chris Capossela*
MS102	10/10/2014 transcript excerpt from the examination of Chris Suh*
MS103	4/23/15 Second Declaration of Michael J. Bernard in Support of Motion for Evidentiary Hearing*
MS104	8/6/2012 email from Molly Vlahovich to Paul D. Weibel, carbon copy to LeAnn Lujan*
MS105	9/19/2014 letter from Michael J. Bernard to Eli Hoory, Esq., with attachment*
MS106	7/6/2015 Objection to Microsoft's Statement in Advance of Telephonic Hearing*
MS107	7/7/2015 Transcript of Telephone Conference*
MS108	5 U.S.C. § 553
MS109	18 U.S.C. § 202
MS110	18 U.S.C. § 203
MS111	26 U.S.C. § 6103
MS112	26 U.S.C. § 6201
MS113	26 U.S.C. § 7601
MS114	26 U.S.C. § 7602
MS115	26 U.S.C. § 7701
MS116	31 U.S.C. § 501 note, § 5(2)(A)
MS117	U.S. Const., Art. I, § 9, Cl. 8
MS118	4/24/2013 email from Thomas Kane to Gary Gray, Charles Christopher, A M Gulas, and Thomas Vidano, carbon copy to Thomas Thomas [IRS-000008]
MS119	5/13/2013 email from A M Gulas to William Spatz [IRS-000032]
MS120	5/17/2013 email from A M Gulas to William Spatz, carbon copy to Charles Christopher, with attachment [IRS-000046-55]
MS121	6/27/2013 email from A M Gulas to Gary Gray, with attachment [IRS-000088-93]
MS122	10/29/2013 email from William Conroy to Charles Christopher, William Spatz, and A M Gulas, carbon copy to Thomas Vidano, with attachment [IRS-000247-252]
MS123	11/25/2013 email from Gary Gray to Drita Tonuzi, carbon copy to Charles Christopher, William Spatz, and A M Gulas [IRS-000330]
MS124	1/8/2014 email from A M Gulas to Charles Christopher, carbon copy to William Spatz [IRS-000336]
MS125	3/11/2014 email from William Conroy to William Spatz and A M Gulas, carbon copy to Thomas Vidano [IRS-000456-457]
MS126	3/28/14 email from William Spatz to A M Gulas [IRS-000534]

No.	Description
MS127	4/8/2014 email from William Conroy to A M Gulas and William V. Spatz [IRS-000603-604]
MS128	5/30/2014 email from Karen Wright to Gary Gray, A M Gulas, and William Spatz, carbon copy to Frederick Schindler [IRS-000961]
MS129	5/30/2014 email from A M Gulas to &PA Green 1, Tom Vidano, Linda Horowitz, Lisa Zarlenga, carbon copy to &PA Green 2, Eileen Shatz, Gary Gray, William Spatz, A M Gulas, Kirsten Witter, and William Conroy [IRS-000967-977]
MS130	6/5/2014 email from Rochelle Hodes to Gary Gray, carbon copies to A M Gulas and William Spatz [IRS-001049-1050]
MS131	6/5/2014 email from A M Gulas to Gary Gray and William Spatz [IRS-001064-1066]
MS132	6/5/2014 email from Kathryn Zuba to Christopher Sterner, carbon copy to Lisa Zarlenga, Rochelle Hodes, Alexandra Minkovich, Mireille Khoury, Drita Tonuzi, Gary Gray, Frederick Schindler, Deborah Colbert, William Spatz, and A M Gulas [IRS-001134-1140]
MS133	9/24/2014 email from A M Gulas to William Spatz, Charles Christopher, and Frederick Schindler [IRS-001428]
MS134	5/30/2013 Updated Audit Timeline

Microsoft reserves its right to supplement this list with newly produced documents by the government, to supplement this list with documents relevant to the subject matter identified in the government's witness list disclosure for any previously unidentified witness the government makes available at the hearing, and to introduce any exhibits on the government's exhibit list. Microsoft further reserves its rights to offer additional exhibits to be used for impeachment purposes only.

Microsoft will have both electronic and hard copy versions of the exhibits available at the hearing.

///

///

///

///

1 DATED this 10th day of July, 2015.

2 CALFO HARRIGAN LEYH & EAKES LLP

3  
4 By s/ Patricia A. Eakes

5 By s/ Andrea D. Ostrovsky

6 Patricia A. Eakes, WSBA #18888

7 Andrea D. Ostrovsky, WSBA #37749

8 999 Third Avenue, Suite 4400

9 Seattle, WA 98104

10 Phone: (206) 623-1700

11 Fax: (206) 623-8717

12 Email: [pattye@calfoharrigan.com](mailto:pattye@calfoharrigan.com)

13 [andreao@calfoharrigan.com](mailto:andreao@calfoharrigan.com)

14 BAKER & McKENZIE LLP

15 By s/ Daniel A. Rosen

16 Daniel A. Rosen, *Pro Hac Vice*

17 452 Fifth Avenue

18 New York, NY 10018

19 Phone: (212) 626-4272

20 Fax: (212) 310-1600

21 Email: [daniel.rosen@bakermckenzie.com](mailto:daniel.rosen@bakermckenzie.com)

22 BAKER & McKENZIE LLP

23 By s/ James M. O'Brien

24 James M. O'Brien, *Pro Hac Vice*

25 300 E. Randolph Drive, Suite 5000

Chicago, IL 60601

Phone: (312) 861-8602

Fax: (312) 861-2899

Email: [james.m.o'brien@bakermckenzie.com](mailto:james.m.o'brien@bakermckenzie.com)

1 BARTLIT BECK HERMAN PALENCHAR & SCOTT  
2 LLP

3 By s/ Philip S. Beck

4 By s/ Sean W. Gallagher

5 By s/ Brian S. Prestes

6 By s/ Robert B. Tannenbaum

7 Philip S. Beck, *Pro Hac Vice*

8 Sean W. Gallagher, *Pro Hac Vice*

9 Brian S. Prestes, *Pro Hac Vice*

10 Robert B. Tannenbaum, *Pro Hac Vice*

11 54 West Hubbard Street, Suite 300

12 Chicago, IL 60654

13 Phone: (312) 494-4400

14 Fax: (312) 494-4440

15 Email: [philip.beck@bartlit-beck.com](mailto:philip.beck@bartlit-beck.com)

16 [sean.gallagher@bartlit-beck.com](mailto:sean.gallagher@bartlit-beck.com)

17 [brian.prestes@bartlit-beck.com](mailto:brian.prestes@bartlit-beck.com)

18 [robert.tannenbaum@bartlit-beck.com](mailto:robert.tannenbaum@bartlit-beck.com)

19 *Attorneys for Respondent / Intervenor*  
20 *Microsoft Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Amy Matchison, Jeremy N. Henson, Noreene C. Stehlik, James E. Weaver and the U.S. Department of Justice; Daniel A. Rosen, James M. O'Brien and Baker & McKenzie LLP; Robert B. Mitchell, Hugh Frederick Bangasser and K&L Gates LLP; George E. Greer and Orrick Herrington & Sutcliffe; Stephen M. Rummage and Davis Wright Tremaine; Philip S. Beck, Sean W. Gallagher, Brian S. Prestes, Robert B. Tannenbaum and Bartlit Beck Herman Palenchar & Scott LLP, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: N/A.

s/ Florine Fujita

Florine Fujita